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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

KPM ANALYTICS NORTH AMERICA
CORPORATION,

Plaintiff.

V.

Civil Action No. 21-CV-10572-MRG

BLUE SUN SCIENTIFIC, LLC, THE
INNOVATIVE TECHNOLOGIES GROUP &
CO., LTD., ARNOLD EILERT, ROBERT
GAJEWSKI, RACHAEL GLENISTER, AND
IRVIN LUCAS,

Defendants.

CHARGE TO THE JURY

VERDICT FORM

We, the jury, unanimously return the following verdict:

PLAINTIFF KPM'S CLAIMS

Trade Secret Misappropriation Claims

Question 1: Has KPM Analytics North America Corporation ("KPM") proven, by a preponderance of the evidence, that any of the following items constitute trade secrets under the Defend Trade Secrets Act and the Massachusetts Uniform Trade Secrets Act:

a. UCal software

✓
Yes

No

b. Calibration datasets

✓
Yes

No

c. Customer information

✓
Yes

No

If you answered "Yes" to any of the above, continue to Question No. 2.

If you answered "No" to all of the above, **STOP**, and continue to Question No. 5.

Question 2: Did KPM prove, by a preponderance of the evidence, that it took reasonable steps to preserve the secrecy of the item(s) that you identified as constituting trade secrets in Question 1?

 ✓
Yes

No

If you answered "Yes," continue to Question No. 3.

If you answered "No," **STOP**, and continue to Question No. 5.

Question 3: Did KPM prove, by a preponderance of the evidence, that Blue Sun, ITG, Arnold Eilert, Robert Gajewski, Rachael Glenister, Irvin Lucas, or any combination of the Defendants misappropriated any of the item(s) that you determined constituted a trade secret in Question 1?

If so, please indicate who misappropriated which trade secret(s) by writing "Yes" in the appropriate boxes below. Please write in "No" where appropriate.

Did Defendant...	Misappropriate UCal Software?	Misappropriate Calibration datasets?	Misappropriate Customer information?
Blue Sun	yes	yes	yes
ITG	NO	NO	NO
Arnold Eilert	yes	yes	NO
Robert Gajewski	yes	yes	yes
Rachael Glenister	NO	NO	yes
Irvin Lucas	yes	yes	yes

Question 4: For Defendants for whom you answered "Yes" in Question No. 3, what total sum of money do you find would fairly and reasonably compensate KPM for the damage caused by that Defendant's misappropriation of trade secrets.

Please write in the amount in dollars and cents (if any) in the space below.

As to Blue Sun
(if applicable)

\$ 1.5m One million five hundred thousand

As to ITG
(if applicable)

\$ 0 zero

As to Arnold Eilert:
(if applicable)

\$ 2,500 ~~500~~ Two thousand five hundred

As to Robert Gajewski:
(if applicable)

\$ 15,000 Fifteen Thousand

As to Rachael Glenister:
(if applicable)

\$ 10,000 ten Thousand

As to Irvin Lucas:
(if applicable)

\$ 20,000 twenty thousand

Alleged Breach of Contractual Non-Disclosure Obligations

Question 5: Did KPM prove, by a preponderance of the evidence, that any of the following is KPM's confidential information: names, addresses, contact persons, purchasing histories and prices, credit standing and other information relating to KPM's clients or prospective clients and their personnel; current, past, potential or prospective prices, costs, profits, markets, products, and innovations; business expansion plans, including business development; internal practices and procedures; trade secrets; technologies, developments, inventions or improvements; and any other information relating to the business of KPM or its clients, including, without limitation, information related to detection systems operating in the range from ultraviolet through infrared, and/or any similar or related products, inventions or improvements which employ discrete testing technology or any other detection systems either developed or acquired by KPM?

✓
Yes

No

If you answered "Yes," continue to Question No. 6.

If you answered "No", **STOP**, and continue to Question No. 8.

Question 6: Did KPM prove, by a preponderance of the evidence, that Arnold Eilert, Robert Gajewski, Rachael Glenister, Irvin Lucas, or any combination of the Individual Defendants breached their Non-Disclosure Agreements by taking action with respect to any of the items that you determined to be KPM confidential information in Question 5?

As to Arnold Eilert: YES ✓ NO

As to Robert Gajewski: YES ✓ NO

As to Rachael Glenister: YES ✓ NO

As to Irvin Lucas: YES ✓ NO

If you answered "Yes" to any of the above, continue to Question No. 7.

If you answered "No" to all of the above, STOP, and continue to Question No. 9.

Question 7: Did KPM prove, by a preponderance of the evidence, that it suffered damages as a result of the breach(es) that you indicated in your answer to Question 5?

✓
Yes No

Alleged Violation of the Covenant of Good Faith and Fair Dealing

Question 8: Did KPM prove, by a preponderance of the evidence, that Arnold Eilert, Robert Gajewski, Rachael Glenister, Irvin Lucas, or any combination of the Individual Defendants violated the implied covenant of good faith and fair dealing owed to KPM?

As to Arnold Eilert: YES ✓ NO

As to Robert Gajewski: YES ✓ NO

As to Rachael Glenister: YES ✓ NO

As to Irvin Lucas: YES ✓ NO

Alleged Violation of the Duty of Loyalty

Question 9: Did KPM prove, by a preponderance of the evidence, that any of the Individual Defendants owed KPM a duty of loyalty?

As to Arnold Eilert: YES _____ NO ✓

As to Robert Gajewski: YES _____ NO ✓

As to Rachael Glenister: YES _____ NO ✓

As to Irvin Lucas: YES _____ NO ✓

Question 10: Did KPM prove, by a preponderance of the evidence, that any of the Individual Defendants that owed KPM a duty of loyalty breached that duty?

As to Arnold Eilert: YES _____ NO ✓

As to Robert Gajewski: YES _____ NO ✓

As to Rachael Glenister: YES _____ NO ✓

As to Irvin Lucas: YES _____ NO ✓

If you answered "Yes" to Question 6, Question 7, Question 8, and/or Question 10, please continue to Question No. 11.

If you answered "No" to Question 6, Question 7, Question 8 and Question 10, STOP, and continue to Question No. 12.

Contract Damages

Question 11: With respect to only those Individual Defendants for whom you answered "Yes" to Question Nos. 6, 7, 8, and/or 10, what total sum of money do you find would fairly and reasonably compensate KPM for the damage caused by those Individual Defendants' contractual breach(es)? Please write in the amount in dollars and cents (if any) in the space below.

As to Arnold Eilert: \$ 2,500 two thousand five hundred
(if applicable)

As to Robert Gajewski: \$ 15,000 fifteen thousand
(if applicable)

As to Rachael Glenister: \$ 10,000 ten thousand
(if applicable)

As to Irvin Lucas: \$ 20,000 twenty thousand
(if applicable)

Alleged Tortious Interference with Contractual Relations

Question 12: Did KPM prove, by a preponderance of the evidence, that either Blue Sun or ITG or both tortiously interfered with KPM's contractual relationships in a way or ways that caused KPM economic harm?

Answering "Yes" below indicates a finding for KPM.

Answering "No" below indicates a finding for the Defendant(s).

As to Blue Sun: YES ✓ NO _____

As to ITG: YES ✓ NO _____

If you answered "Yes" to Question 12, continue to Question No. 13.

If you answered "No" to all of the above, STOP, and continue to Question No. 14.

Question 13: What amount of money would fairly and reasonably compensate KPM for the economic harm that this tortious inference caused?

As to Blue Sun: \$ 1.5m one million five hundred thousand
(if applicable)

As to ITG: \$ 1.8m one million eight hundred thousand
(if applicable)

Unfair and Deceptive Trade Practices (Chapter 93A)

Question 14: Did KPM prove, by a preponderance of the evidence, that either Blue Sun or ITG or both engaged in any competition, or any attempt at competition, using unfair or deceptive acts or unfair methods of competition in the conduct of trade or commerce?

As to Blue Sun: YES ✓ NO

As to ITG: YES ✓ NO

Answering "Yes" indicates a finding for KPM.

Answering "No" indicates a finding for Defendant(s).

Question 15: Did KPM prove, by a preponderance of the evidence, that either Blue Sun or ITG or both willfully or knowingly engaged in unfair methods of competition or unfair or deceptive acts or practices?

As to Blue Sun: YES ✓ NO

As to ITG: YES ✓ NO

Answering "Yes" indicates a finding for KPM.

Answering "No" indicates a finding for Defendant(s).

Two Individual Defendants' Counterclaims

Question 16: Did Individual Defendant Arnold Eilert prove, by a preponderance of the evidence, that KPM had a contractual obligation to pay Mr. Eilert a severance payment after his employment at KPM concluded?

 ✓
Yes No

If you answered "Yes," continue to Question No. 17.

If you answered "No," STOP, and continue to Question No. 19.

Question 17: Did Individual Defendant Arnold Eilert prove, by a preponderance of the evidence, that KPM breached their contractual obligation to pay Mr. Eilert a severance payment after his employment at KPM concluded?

Yes No

If you answered "Yes," continue to Question No. 18.

If you answered "No," STOP, and continue to Question No. 19.

Question 18: If you answered "Yes" to Question 17, what amount of money would fairly and reasonably compensate Mr. Eilert this breach of contract?

As to Arnold Eilert: \$ _____
(if applicable)

Question 19: Did Individual Defendant Robert Gajewski prove, by a preponderance of the evidence, that KPM had a contractual obligation to pay Mr. Gajewski a severance payment after his employment at KPM concluded?

Yes No

If you answered "Yes," continue to Question No. 20.

If you answered "No" to all of the above, STOP.

Question 20: Did Individual Defendant Robert Gajewski prove, by a preponderance of the evidence, that KPM breached their contractual obligation to pay Mr. Gajewski a severance payment after his employment at KPM concluded?

Yes No

If you answered "Yes," continue to Question No. 21.

If you answered "No," STOP.

Question 21: If you answered "Yes" to Question 20, what amount of money would fairly and reasonably compensate Mr. Gajewski this breach of contract?

As to Robert Gajewski: \$ _____
(if applicable)

Foreperson Name (Please Print)

Abigail Godbout


Foreperson Signature:

Abigail Godbout

Date Jury Reached Verdict:

5/17/23

In reference to Question 12, is the
third party other vendors such as
poster or is it the four named
defendants?

alper 

5/17/23

11:10

AM

Jury has a verdict

Alvin Lee

5/17/23

2:45pm

me

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